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DAVID E. JANSSEN
Chief Administrative Officer

May 23, 2005

To: Supervisor Gloria Molina, Chair
Supervisor Yvonne B. Burke
Supervisor Zev Yaroslavsky
Supervisor Knabe
Supervisor Michael D. Antonovich

From: David E. Janssen
Chief Administrative Officer

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MOTION TO SUPPORT THE CALIFORNIA PUBLIC UTILITIES COMMISSION INITIATIVES, AB 158 (BERMUDEZ), AB 1067 (FROMMER), SB 578 (ESCUTIA), AND SJR 13 (ESCUTIA) – RAIL SAFETY (ITEM NO. 19, AGENDA OF MAY 24, 2005)

Item No. 19 on the May 24, 2005 Agenda is a motion by Supervisor Molina to support: the California Public Utilities Commission Initiatives related to rail safety; AB 158 (Bermudez); AB 1067 (Frommer); SB 578 (Escutia); SJR 13 (Escutia); and any other State or Federal railroad safety legislation that is designed to prevent accidents and increase California's control over railroad safety; and send five-signature letters to the County's State Legislative Delegation expressing our support of AB 158, AB 1067, SB 578, and SJR 13.

California Public Utilities Commission Initiatives

The California Public Utilities Commission (CPUC) issued a report in April 2005 that included a Railroad Safety Action Plan aimed at improving rail safety and obtaining greater regulatory authority over rail safety issues. The Action Plan also includes support of specific legislation related to rail safety and other actions including collection and analysis of data with respect to rail accidents and/or "near misses".

The CPUC report also outlines a number of additional activities to improve rail safety including: 1) increasing the number of focused track, equipment, and operating practice inspections performed by CPUC staff; 2) investigating rail related fatalities and significant accidents, and applying the lessons learned to rail crossing diagnostic reviews, rail corridor safety enhancements, and operational safety enhancements that

advance the cause of rail safety; 3) issuing public reports regarding the root causes and significant contributing factors of all accidents investigated; 4) convening quarterly meetings and monthly conference calls between the Federal Railroad Administration (FRA) regional management and CPUC management; and 5) advocating in favor of positive train control and video cameras mounted on locomotives.

In addition to these activities, the CPUC report includes support for specific Federal rail safety bills, and a California Joint Legislative Resolution requesting amendments to the Federal Railroad Safety Act to allow states like California the ability to designate Local Safety Hazard sites, and regulate railroad safety locally, and to assess financial penalties when the lives of citizens, the environment, or local security is threatened. In response, Senator Escutia introduced SJR 13 on May 12, 2005 to provide more authority for local oversight and enforcement of rail safety standards. The CPUC report includes support for rail safety legislation, including, but not limited to: S. 197 (Boxer), S. 230 (Shumer/Graham), S. 763 (Dorgan/Hutchison), S. 1402 (McCain), H.R. 603 (Watson), and H.R. 2378 (Oberstar).

S. 197 and H.R. 603 are similar bills that would require the Secretary of Transportation to improve safety at railroad grade crossings, and reduce the impact of blocked crossings on emergency responders to perform public safety and security duties. S. 230 addresses highway-rail grade crossing safety and the transportation of hazardous materials, and S. 763 directs the FRA to make welded rail and tank car improvements. Two of the six Federal bills listed, H.R. 2378 and S. 1402, died in the previous session of Congress.

Support for the rail safety provisions of S. 197, S. 230, S. 763, and H.R. 603 is consistent with Board action of July 8, 2003 to seek Federal legislation regarding notification protocols to avoid future railroad accidents and general support for rail safety legislation. However, our Washington D.C. advocates indicate it is unlikely Congress will act on any of these bills this year, and the Committees with jurisdiction over railroad safety have no plans to consider rail safety legislation.

State Rail Safety Legislation

AB 158 (Bermudez), as amended on April 20, 2005, would require the CPUC to convene a special task force to study certain railroad safety issues, including: 1) identifying threats from vandalism or terrorism that are not adequately addressed by existing rail safety programs, and making recommendations to address those threats in the future; 2) identifying deficiencies in current land use planning and making recommendations for changes in land use planning to lessen risks to the public and environment; 3) identifying deficiencies for responding to railroad emergencies and to make recommendations for changes to improve emergency response; and 4) requiring the CPUC to include the findings and recommendations of the task force in its next annual report to the Legislature on sites on railroad lines that are found to be

hazardous. Support for AB 158 is consistent with Board action of July 8, 2003 and September 16, 2003 to support railroad safety legislation.

The author is the sponsor of AB 158, and there is no registered support or opposition. This measure is currently in the Assembly Utilities and Commerce Committee, but has yet to be set for a hearing.

AB 1067 (Frommer), as amended on May 5, 2005, would: 1) subject a person who places or causes to be placed an obstruction on a railroad track that results in train damage or passenger injury to two, three, or four years in prison, or a maximum one year in county jail, a maximum \$2,500 fine, or both imprisonment and the fine; and 2) make other railroad grade crossing violations, such as entering a railroad or rail transit crossing without sufficient space on the other side of the railroad or rail transit crossing to accommodate the vehicle driven, subject to existing minor penalties.

In addition, AB 1067 would: 1) increase from \$15 million to \$30 million, the annual Caltrans proposed allocation for grade separation projects, and require each annual proposed Caltrans budget to include Federal funds from the Railroad-Highway Grade Crossing program supplemented by \$10 million from State resources; 2) allow the California Transportation Commission (CTC) to reduce or eliminate a local agency's required contribution to the costs of a State-subsidized grade separation project; and 3) increase from \$5 million to \$15 million, the maximum allocation a single grade separation project can receive under the annual State allocation, if the project is the highest ranking priority project on the CPUC's annual project priority list.

The Department of Public Works (DPW) has concerns about the bill's increased funding for grade separation projects because funding for other transportation projects in the county could be reduced. DPW indicates that these provisions of AB 1067 appear to be counter to existing County policy on grade separations, and therefore, make no recommendation.

Support for the provision of AB 1067 which increases the fines for rail transit rights-of-way violations is consistent with existing County policy to support legislation to increase fines for rail transit rights-of-way violations to make them comparable to fines for running a red-light, or illegally driving in an HOV lane.

There is no existing policy to address the provision of AB 1067 which would increase prison or jail time for persons who place, or cause to be placed, an obstruction on a railroad track that results in train damage or passenger injury.

Support for the provision of AB 1067 which authorizes the California Transportation Commission to reduce or eliminate the local match for State-subsidized grade separation projects is consistent with general County policy to support funding for projects with no local matches.

Existing County policy supports an increase in grade separation funds if regional transit programs are not harmed and the funding received by the Department of Public Works from the California Department of Transportation, or from gas tax revenues is not reduced. Because the two provisions in AB 1067 that increase grade separation project funding would significantly reallocate State transportation funds resulting from the increase in annual grade separation project allocations, there is no existing policy to support these provisions of the bill.

Because there is no existing policy to cover all provisions of AB 1067, a position on this measure is a matter for Board policy determination.

The author is the sponsor of AB 1067, and there is no registered support or opposition. This measure was placed on the Assembly Appropriations Suspense File on May 11, 2005, and has not been set for hearing.

SB 578 (Escutia): Existing State law establishes the safety division of the CPUC, which is responsible for inspection, surveillance, and investigation of the rights-of-way, facilities, equipment, and operations of railroads and public mass transit guideways, and for enforcing State and Federal laws, regulations, orders, and directives relating to transportation of persons and commodities by rail. Existing law also requires every railroad corporation that transports hazardous materials in the State to: 1) provide a system map of the State to the Office of Emergency Services, and to the CPUC showing certain information; 2) annually submit a copy of its emergency handling guidelines to the office; and 3) provide specified information in the event of an incident where there is a release or threatened release of a hazardous material.

Furthermore, existing law requires the CPUC to require every railroad corporation operating in the State to develop a protocol for rapid communications with the Office of Emergency Services, the California Highway Patrol, and designated county public safety agencies in an endangered area if there is a runaway train, or any other uncontrolled train movement that threatens public health and safety.

SB 578 (Escutia), as amended on May 4, 2005, would replace references to the safety division with references to the consumer protection and safety divisions, and require a railroad corporation to promptly notify the Office of Emergency Services, the California Highway Patrol, and designated county public safety agencies in an endangered area, or certain information relative to hazardous materials, and in certain events, of train and track locations, whether or not an accident or spill occurs. The bill would require the consumer protection and safety division of the CPUC to investigate any incident that results in a notification pursuant to this requirement, and to report its finding concerning the cause or causes to the CPUC for inclusion in its annual report to the Legislature.

Support for SB 578 is consistent with the County's support for AB 1618 (Firebaugh) of 2003, which required the rail companies to develop a protocol for rapid communication with local authorities of a hazardous railroad-related situation.

The author is the sponsor of SB 578, and there is no registered support or opposition. This measure is set for hearing on May 23, 2005 in the Senate Appropriations Committee.

SJR 13 (Escutia), as introduced on May 12, 2005, is a Joint Resolution that states legislative intent and findings with respect to rail safety, and would urge the President and Congress of the United States to amend the Federal Railroad Safety Act to increase the authority of state and local governments to enact railroad safety regulations providing greater protection for their residents from railroad derailments, hazardous materials spills, and highway-rail crossing accidents, as long as State enactments, rules, or regulations do not conflict with Federal law and do not impose an unreasonable burden on interstate. The Resolution also urges the Federal Railroad Administration to work cooperatively with California and the railroad corporations by increasing its staff and funding, and by delegating additional authority to California offices to regulate standards relating to railway track, operations, and equipment that will prevent and reduce the severity of accidents, derailments, and hazardous material spills.

Support for SJR 13 is consistent with Board action of July 8, 2003 to seek Federal legislation regarding notification protocols to avoid future railroad accidents and support of State railroad legislation designed to improve railroad safety.

SJR 13 is sponsored by the author and supported by the California Public Utilities Commission. There is no registered opposition. This measure is in the Senate awaiting referral to a policy committee.

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c: Executive Officer, Board of Supervisors
 County Counsel
 Department of Public Works
 Sheriff's Department